THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.17925 OF 2005

DATED: 10.8.2006

BETWEEN:

The Mathrusree Cooperative House Building Society And Others

… Petitioners.

And

Gajuwaka Municipality, Gajuwaka, Vishakapatnam and Others. … Respondents.

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.17925 OF 2005

ORDER:

1. Though the matter is appearing under interlocutory, all the counsel on record, made a request to dispose of the writ petition itself and accordingly, the writ petition is being disposed of.

2. The writ petition is filed by the petitioners for a writ of mandamus directing the Gajuwaka Municipality to release the layout approved by the Vishakapatnam Urban Development Authority within one week to enable the writ petitioners to undertake appropriate construction activities and pass such other suitable orders.

3. Originally Gajuwaka Municipality, represented by its Commissioner, is shown as R.1 and at present, an application was filed to substitute Greater Visakhapatnam Municipal Corporation, Gajuwaka as first respondent in the place of existing first respondent – Gajuwaka Municipality and the same was ordered by this Court on 26.12.2005. Thus at present Greater Visakhapatnam Municipal

Corporation, Gajuwaka is substituted in the place of the first respondent – Gajuwaka Municipality.

4. Sri G.S.N.Murthy the then Commissioner of Gajuwaka Municipality was impleaded as R.2 in his personal capacity. R-3 is Visakhapatnam Urban Development Authority represented by its Vice Chairman.

5. Heard Sri Nuty Ram Mohan Rao, the counsel representing the writ petitioners, Sri Ranga Reddy, the learned Standing Counsel representing Greater Visakhapatnam Municipal Corporation, the present R-1 substituted in the place of Gajuwaka Municipality, Sri Avula, the counsel representing Sri G.S.N.Murthy, the second respondent and the then Municipal Commisssioner of Gajuwaka Municipality impleaded in personal capacity and Ms.Preethi Reddy, the counsel representing R-3, Vishakhapatnam Urban Development Authority.

6. Sri Nuty Ram Mohan Rao, the learned counsel representing the writ petitioners had taken this Court through the affidavit filed in support of the writ petition and also the respective stands taken in the counter affidavits and had vehemently commented on the total inaction on the part of Sri G.S.N.Murthy, the second respondent, in placing the

matter before the Municipal Council. Certain serious allegations also had been made as against the said party respondent No.2, impleaded in his personal capacity. The learned counsel also further explained relating to the conditions to be complied with and would submit that in view of the fact that certain conditions are to be deleted and the petitioners are prepared to comply with certain conditions like making gift and also complying with the balance value relating to the land value determination. The learned counsel would maintain that it would be appropriate if the matter is remitted to R-3, the Vishakapatnam Urban Development Authority especially in the light of the peculiar stand taken by both Gajuwaka Municipality and also at present the Greater Vishakapatnam Municipal Corporation.

7. On the contrary, Sri Ranga Reddy, the learned Standing Counsel representing at present the substituted party, respondent No.1, had taken this Court through the counter affidavit filed by the Commissioner of Gajuwaka Municipality and would maintain that in the facts and circumstances of the case the relief prayed for by the petitioners cannot be granted.

8. Sri Avula representing Sri G.S.N.Murthy, the second respondent, would contend that the allegations are made as against

the second respondent only due to frustration and no acceptable material is placed before this Court and especially in the light of the stand taken by the second respondent – Sri G.S.N.Murthy, in the counter affidavit, no observations in relation to the said allegations to be made.

9. Ms.Prithi Reddy, the learned counsel representing the third respondent had taken this Court through the counter affidavit filed by the third respondent and would maintain that unless and until the conditions specified by the third respondent are complied with, the question of releasing of lay out, as requested for, would not arise.

10. Heard the counsel on record.

11. The Secretary of the first petitioner Society had sworn to the affidavit filed in support of the writ petition. It is stated that M/s.Mathrusree Cooperative House Building Society, hereinafter for short, referred to as 'society' for the purpose of convenience, was one of the oldest Cooperative House Building Societies got established in Vishakapatnam way back in the year 1979 bearing registration No.B-1751 and there are 1500 members in the society. The aforesaid society had acquired approximately 47.69 acres of land situated at Kurmannapalem village and the said village is one of the satellite

villages of Visakhapatnam city and since the lands were acquired by the Society much prior to the establishment of Visakhapatnam Steel Plant, it was not considered as a prime area in those days. It is also stated that Kurmannapalem village is part of Vadlapudi Gram Panchayat, which is a major Gram Panchayat in the former Visakhapatnam Taluq. It is also stated that the society had developed the land and made lay outs for housing colony and allotted plots in favour of nearly 400 of its members and conveyance of the title in favour of the plot owners had also been accomplished by execution of registered sale deeds in their favour. It is also stated that as demanded by the Vadlapudi Gram Panchayat, which is the competent authority for according approval for laying out the housing colonies, a sum of Rs.24,402-30 was paid towards the conversion charges of the land from agricultural use to non-agricultural uses by the Society and the receipt passed by the Gram Panchayat was furnished to the third respondent. The lay out approval charges were also paid and thereafter the Vadlapudi Gram Panchayat had forwarded the application for approval of the 2nd respondent on 23.2.1980. Considering the proposal of the Vadlapudi Gram Panchayat, the second respondent through proceedings dated 09.2.1981 directed the

Society to comply with certain objections raised by the second respondent. The Visakhapatnam Urban Development Authority (VUDA) had also demanded for production of documents vouching for the title of the society to the land, detailed lay out plan, topographic plan and contour plans in triplicate and demanded payment of development charges in accordance with the rates fixed by the State Government. The VUDA demanded a sum of Rs.74,630/- to be deposited towards the development charges. The Society had also pointed out that the plotted area, after leaving 46% of the total area towards public/civic/communal purpose, works out for and the development charges are to be paid @ Rs.54,000/- only. It is learnt that several rounds of communications and correspondence ensued between the Society and the VUDA. It is also stated that objections ranging from the dispute about the title to the land, ensuing land acquisition proceedings for certain extent of land forming part of the proposed lay out by the Indian Railways and a proposal by the VUDA itself for establishing a satellite township there around, have all come in the way of final settlement of the matter.

12. It is also stated that ultimately the land acquisition notifications had been withdrawn under Section 49(1) of the Land Acquisition Act

and thereafter, the VUDA had passed a resolution No.26 on 12.4.1986 resolving to grant the layout sought for by the Society, after scrutiny of the title deeds. Yet another resolution No.47, dated 01.6.1986 approving the layout in an extent of 43.69 Acres only had been passed by the VUDA. Even with reference to the balance of 4 acres of parcel of land left out, when the matter had once again been taken up, VUDA had passed resolution No.160, dated 30.12.1986 to grant the layout to the Society if no orders were received from the State Government within the next 30 days with regard to the withdrawal of the land acquisition proposals kept pending by the State Government. The entire issue was again considered by the VUDA and it passed resolution No.174, dated 24.2.1987 granting the layout permission with regard to the left out parcel of 4 acres land as well and thus finality had reached.

13. It is also further stated that the actual release of the block layout plan had been deferred at the very last minute inasmuch as the Land Acquisition Officer had gone ahead and passed an award with reference to the land acquisition proposals initiated under section 4(1) of the land Acquisition Act as the State Government had not passed orders withdrawing the lands from the acquisition proposals and the

time for passing the award was running out. As a result of this award passed by the land Acquisition Officer, the VUDA was disabled from releasing the layout plan in favour of the Society and it accordingly, rejected the same through its communication dated 24.4.1987 and in those circumstances, questioning the correctness of the rejection order, the Society filed W.P.No.7093 of 1987 and this Court by its judgment dated 11.10.1988 was pleased to set aside the awards passed by the Land Acquisition Officer in question and consequently, the orders of rejection passed by the VUDA on 24.4.1987 were also set aside.

14. It is also stated that taking up the matter for consideration all over again, the VUDA directed a sum of Rs.80,171 to be deposited with it towards the development charges and a further sum of Rs.32,070/- with the Vadlapudi Gram Panchayat at the rate of Rs.2/- per 10.sq.metres area. Thus, in all, a sum of Rs.1,12,241/- had been demanded. Though the Society had protested for the same, nonetheless, the said sum of Rs.1,12,241/- as demanded by the VUDA through its letter dated 22.10.1990 had been paid up on 6.12.1990 and the receipts were furnished to VUDA. The Society, therefore, requested the layout plan to be released. Once again, part

of the layout land is sought to be acquired by the VUDA for its own purposes. When W.P.No.6186 of 1990 was moved and pursuant to certain directions issued by this Court, through proceedings dated 3.1.1991, block layout plan bearing No.5 of 1990 had been released by VUDA stipulating the following conditions:

A. Block Layout Plan approval is subject to only for the lands other than Government/Tenure dispute lands.
B. Approval is given as per the High Court orders in W.P.M.P.No.7896 of 1990 dated 25.4.1990 and subject to the various points mentioned in the Court order itself.
C. The Society shall form the major approach road to export processing Zone, since the same is part of the layout.
D. The approval is also subject to Visakha9patnam urban Development Authority Board Ratification.
E. That the said Society should furnish an undertaking on a non-judicial stamp worth of Rs.10/- duly attested by a Notary stating that they should pay external development cost as and when demanded by Visakhapatnam Urban development Authority before the release of final layout.

15. It is also stated that the Society had entered into a detailed and exhaustive correspondence with the VUDA and ultimately, it had agreed to part with the land of an extent of 1.05 acres in all for the purpose of laying a 100 feet approach road to the Export Processing Zone, sought to be constructed in the proximate closeness of the layout lands of the Society in Kurmannnapalem village. It was suggested that the Export processing Zone, one of its kind in the entire State, is to be established and that the said project is a prestigious one

insofar as the Visakhapatnam is concerned and hence, it is obligatory for the Society to cooperate by allowing the 100 feet road to be laid through its lands for approaching the Vizag Export Processing Zone. Without seeking any compensation, the Society had parted with the land of an extent of 1.05 acres free of cost and allowed 100 Feet road to be formed through its land for approaching the Export Processing Zone from the national high way No.5. Notwithstanding such generous attitude adopted by the Society, the final layout plan adopted by the Society, the final layout plan liable to be released in its favour, had not bee released and instead another block layout plan No.25 of 1991 had been released on 15.10.1991 virtually reiterating the same conditions as were stipulated earlier on 3.1.1001. As desired, the internal road sizes had been modified and internal roads of 60', 40' and 30' had been laid. After due inspection, the Vice-Chairman of the VUIDA appears to have passed orders in the file, Rc.No.122090-G1, dated 18.12.1992 for releasing the final layout plan in favour of the Society.

16. It is also further stated that originally, the APSEB had estimated the cost of providing electrification works to the layout at Rs.9,33,200/- and the same was subsequently revised upwardly to Rs.13,04,000/-

and those amounts had also been paid up by the Society. Full length masonry drains had been constructed. It is also stated that for one reason or the other, the final layout plan in favour of the Society was not accorded though the 60' and 40' internal roads of the Society are put to use as thoroughfare and approach roads for the housing projects undertaken by VUDA. It is also stated that after protracted correspondence and litigation in this Court, inspections had been ordered to be conducted as to ascertain the facts relating to the formation of roads, construction of drainages, construction of 54 culverts for free passage of storm water drain also the avenue tree plantation work had been accomplished. It was also further stated that team of officials, which included the 2nd respondent herein had visited the layout site and drew up a report in detail on 01.9.2004. Based upon the same VUDA had passed orders through its proceedings dated 28.9.2004 releasing the final layout plan of the land developed by the Society, but however, it had released the layout plan to the Gajuwaka municipality in whose local limits Kurmannapalem layout had fallen and imposed the following conditions to be accomplished:

> " 1. The 2 pockets are covering an extent of Acs.2.05 cts., which is not developed should be developed or if it cannot be done, it should be withheld from the layout boundary.
> 2. To furnish a certificate from A.P.Transco of having completed

the street electrification works together with provision of 3 transformers to the Commissioner, Gajuwaka Municipality.

3. Two bore wells to be provided in proposed open space.

4. The open spaces marked as B,C,D,E,F in BLP No.1/93 were sold as plots as early n 1982 by the society to its members and hence, the alternative open space to an extent of Acs.1.27 cts., proposed by the Society should be handed over to the Commissioner,Gajuwaka Municipality duly fencing it over a 2' basement wall and should pay land value for the balance area of Ac.2.69 cents towards the 10% open space, to fulfill the 10% open space norms to the Commissioner, Gajuwaka Municipality.

5. All Court cases filed by the affected allottees in the open space areas of BLP No.1/93 shall be withdrawn as their grievance have been resolved."

17. It is also stated that the land of an extent of Ac.2.05 in 2 pockets had been encroached upon illegally by certain lawless persons. A suitable civil action was initiated against them. Further, 3 of the 4 electric transformers installed by the Electricity Board had suffered pilferage. Similarly, transmission lines, which had been laid in the layout, had been cut and stolen away taking advantage of the darkness of the layout. However, upon complaint lodged with the local police, the crime had been investigated and 5 out of 6 persons responsible for these pilferages had been arrested and some of the stolen property had been retrieved, but however, one of the accused was still at large and is believed to have run away to the nearby area

and the local police were unable to apprehend him and bring him to book. It is understood that rest of the stolen property can be restored only upon his arrest. Therefore, the criminal case is taking its own time. However, the electricity board officials had specifically given an undertaking that they will reinstall the three pilfered transformers in the layout and also relay the transmission lines, which had been cut and stolen away. The two bore wells had been dug up in the layout. All the roads had been once again re-laid, the masonry drainage had been accomplished and as was further desired, the tree plantation work had also been provided by getting constructed the road dividers around them. During the course of inspection by the team of VUDA officials in which the engineering staff of the Gajuwaka Municipality had also participated, the green belt and open spaces provided in the layout had been measured and recorded as 1.27 acres. Leaving out the green belt area, rest of the open spaces were asked to be surrounded by a fencing upon a 2' basement. Accordingly, the open spaces had been completely surrounded by a 2' compound wall and mesh installed thereon. For the balance of 2.69 acres, VUDA suggested to the Gajuwaka Municipality to collect the land value. Accordingly, a sum of Rs.1,70,000/- had been paid by way of demand

drafts. They had been encashed by the Gajuwaka Municipality.

18. It is also stated that in spite of being satisfied that all the conditions stipulated by the VUDA had been fully accomplished, the 2nd respondent herein had not initiated any steps to release the final layout plan in favour of the Society. It is openly touted in Gajuwaka that the 2nd respondent is habituated to receive illegal gratifications for performing his official functions. Therefore, the 2nd respondent had not put up any proposal before the Gajuwaka Municipality to enable it to pass a resolution to accept the gift of open spaces and green belt area of an extent of 1.27 acres and to receive the value of the balance open spaces. He had also not taken any steps for passing a resolution for vesting of the roads and two bore wells dug up in the lay out for providing the drinking water in the layout and the take over of the maintenance of the masonry drains and 54 culverts constructed in the layout. It is also stated that the second respondent is sitting tight on the matters and he does not pass orders and tries to create false record as if he had been attending to the relevant work. It is also learnt that the Society had in fact succumbed to the illegal demands of the 2nd respondent. It is strongly rumored that the 2nd respondent had received illegal gratification through his wife Guruja Satyavathi from

the Society, but yet he was not satisfied and he had been deliberately and purposefully avoiding to perform his legal obligations by not releasing the lay out.

19. It was also further pleaded that the actions of the 2nd respondent amounted to contemptuous conduct on his part, appropriate contempt proceedings in C.C.No.240 of 2005 had been initiated in this Court and this Court after issuing notice, had been prima facie satisfied that the 2nd respondent was guilty of having committed contempt of Court and accordingly put him on notice. The second respondent had not taken any steps to purge his conduct so far. It was also stated that since the contempt proceedings would only result in visiting some punishment or disapproval of the contempt of the second respondent only, he is merrily sitting tight on the file without releasing the layout in favour of the Society and is proclaiming openly that this Court is not going to punish him at all and therefore, the Society is constrained to file the writ petition otherwise it will not be able to secure permission from the appropriate authorities for construction of residential houses. It is also stated that they had been waiting for all these years for the final lay out to be released so that their building permissions will be considered and approvals will be

accorded to enable them to undertake construction of buildings. Until the final lay out is released, the building permissions will not be accorded by the Gajuwaka Municipality and thus, the second respondent was indulging in arm-twisting tactics, so that all the plot owners also will succumb to his illegal demands, otherwise they will be put to irrepairable loss and hardship at the hands of second respondent inasmuch as the construction costs are spiraling by passage of time and their plots are being exposed to the risk of encroachments by antisocial elements during night times and every night they find temporary structures such as thatched huts etc., are being raised in one plot or the other taking full advantage of the lack of appropriate security during the night time to the lay out. They are visiting the police stations and lodging complaints against the encroachers and at the site the watchman and other security staff put up by them were beaten up by the antisocial elements creating law and order problems because of the isolation of the layout. It is also stated that protecting and preserving the land had now become an acutely difficult job and to protect their property in question, they were rendered helpless due to the illegal conduct of the second respondent. Therefore, the Gajuwaka municipality should be

compelled to release forthwith the layout inasmuch as any other conditions stipulated by VUDA, if at all are liable to be accomplished, they can always be accomplished later on also, and they will be able to preserve and protect the property in the mean time. After all Gajuwaka Municipality will have effective control over the layout activity, therefore, it is appropriate that the final layout should be released forthwith.

20. It is further stated that there are no bona fides whatsoever behind the action of the Commissioner of Gajuwaka Municipality in not releasing final layout as per the directions of the VUDA. It is also stated that the Gajuwaka Municipality is bound to carry out in all respects the directions issued by the VUDA, which is a statutory Corporation and hence, Gajuwaka Municipality or its Commissioner are not vested with any further discretion in the matter. The Commissioner, Gajuwaka Municipality cannot raise any dispute with regard to the measurement as are found and included in the layout plan released by VUDA on 22.9.2004. Infact the commissioner, Gajuwaka Municipality, the Municipal Engineer and the Town Planning Officer of Gajuwaka Municipality were very much present and they were part of the inspecting team constituted by VUDA, which

had undertaken repeated inspections of the layout. Only thereafter, the final report drawn on 1.9.2004 had been submitted to this Court. It is stated that the Commissioner of Municipality cannot now turn around and indulge in baseless and speculative issues and try to create factual dispute relating to measurement for the sake of creating one. Further, the Commissioner, Gajuwaka Municipality cannot seek to alter the letter and spirit of the orders passed by VUDA, when it authorized the Gajuwaka Municipality to collect the value of the land for the balance extent of Ac.2.69 cents. It is also stated that the value of the land had been authorized to be collected in view of the fact that an equal extent of land in the layout plan laid down as plots and conveyed to the members of the Society in the period between 1980-84, therefore, VUDA had suggested the value of this extent of land to be received. It is stated that the realignment and adjustments of the plots had become an acute necessity in view of the altered positions with regard to the roads in the layout. In the original lay out plan drawn and submitted for approval to the Vadlapudi Gram Panchayat there was no provision made for a 100' VPEZ approach road to pass through the layout in question. As a measure of cooperation and obligation, the Society had transferred free of cost 1.05 acres to VUDA

for laying this 100' road. It is also stated that the rules during 1980s only required the internal roads in a layout to be of 30'dimension. Since the layout plans had delayed from being released, the new conditions relating to formation of 60' and 40' roads had got incorporated though the layout application itself was an old one relating to the year 1979 and these were also accomplished. It is also stated that consequent to this realignment of road positions, nearly 3 acres of plotted area had been consumed up. Hence, correspondently new plots had been carved out in an extent of 2.69 acres so that the members of the Society to whom plots were allotted long ago will not be put to the misery of losing out a plot altogether. Therefore, realizing these very compelling factors, the VUDA had authorized the Gajuwaka Municipality to collect the value of the land of an extent of 2.69 acres from the society. Therefore, the Gajuwaka Municipality cannot now seek to raise a dispute at all with regard to the point at which the land value had to be ascertained. It is also stated that there were no lands available in the proximate closeness of the layout, for any one to purchase in measures of acres. The land available in the proximate closeness of the layout had been developed by the VUDA itself into residential colony and the members of the general public had been

allotted after dividing the same into plots of HIG, MIG and LIG. Therefore, the sale transaction of lands in the proximate vicinity of the layout in question are not taking place in acres, but the sale transactions are taking place for few hundred square yards of sites and hence, the very question of seeking to collect the market value of land in acres in the year 2004 simply does not arise. This issue had been purposefully created by the 2nd respondent to derive benefit to himself.

21. It is also further stated that from the correspondence ensued between the respondents and the Society after 22.9.2004 will unmistakably disclose as to how the 2nd respondent is creating record. However, there are no bona fides behind his conduct. In fact, as long back as on 24.4.1995, the 2nd respondent who was also functioning as the Municipal Commissioner of Gajuwaka Municipality then suggested to the VUDA that the layout be released in favour of the Society. It is further stated that the second respondent had been acting for extraneous reasons and considerations by deliberately withholding the release of the layout plan. The lack of bona fides of his conduct can be gauged from the fact that he is suspecting, altogether purposefully, that the electricity board officials will not install three transformers stolen from the layout and that the police had not in

fact, mentioned the crime number relating to such theft, though the FIR number had been specifically quoted by the electricity board officials in their assurance letter. The lack of bona fides on the part of the second respondent can also gauged from the fact that he insisted that the Society should approach the Urban Land Ceiling Authorities and secure permission from them for transfer of the open spaces, green belt area and roads in favour of the local municipality, though such a requirement is uncalled for and unwarranted, but nonetheless, the Society went around the ULC authorities and secured their permission for transferring the aforementioned lands in favour of the Gajuwaka Municipality, but thereafter, the second respondent had not put up such a proposal at any time before the Gajuwaka Municipality for it to pass any resolutions. This very fact will demonstrate as to how malafide he is acting in the matter. It is also stated that the second respondent being a public servant is expected to discharge his functions without any favour or fear, but contrary to this expectation, the second respondent actuated by extraneous considerations, had been deliberately withholding the release of the layout. Several other factual allegations also had been made in the affidavit filed in support of the writ petition.

22. It is needless to say that at present Gajuwaka Municipality is not in existence and that is the reason why the Greater Vishakapatnam Municipal Corporation had been substituted as first respondent.

23. In the counter affidavit filed by the Commissioner of the first respondent Corporation at present, it was stated that the Government of Andhra Pradesh upgraded the Vishakapatnam Municipal Corporation as Greater Vishakapatnam Municipal Corporation duly merging Gajuwaka Municipality and 32 Gram Panchayat areas into Greater Vishakapatnam Municipal Corporationarea. Hence, the counter is being filed by the Commissioner of the said respondent-Corporation. It is stated that during the year 1993 the Vishakapatnam Urban Development Authority (VUDA) on an application submitted by the petitioner association issued block layout plan in Proc.Roc.No.1229-90-G1 dated 3.1.1991 for an extent of Ac.39.61 vide B.L.P.No.5/90 subject to fulfillment of certain conditions imposed. The VUDa authorities released the B.L.P. as per the orders of the Hon'ble High Court in W.P.M.P.No.7896 of 1990 dated 25.4.1990 of W.P.No.6186 of 1990 duly withdrawing land acquisition proposals of the land belonging to petitioners association. The VUDA had released B.L.P. initially during 1993 subject to fulfillment of conditions a, b, c, d

and e, which are also mentioned in the petitioner's affidavit. The VUDA had imposed that the final lay out will be released after fulfillment of the above conditions within six months failing which VUDA is at liberty to cancel the layout or to take up the development of infrastructure duly charging the development cost worked out for the layout.

24. It is also further stated in the Counter affidavit that it is true that again on the representation of the petitioner association to the VUDA regarding formation of approach road to export processing zone in the layout and incorporations of modifications in the layout plan etc, the VUDA had released revised B.L.P.No.1/93 vide proceedings Roc.No.1229/91/G1 dated 8.1.1993 subject to fulfillment of conditions and stipulated time limit up to 31.3.1993 for development of lay out as per specifications and after fulfillment of conditions and development of layout to report to VUDA through the then Gajuwaka Municipality for release of final layout failing which VUDA will cancel the layout.

25. It is further stated that then the Gajuwaka Municipality also released B.L.P.No.1/93 to the layout owner in the proceedings Roc.No.132/93/G1 dated 17.11.1993 subject to fulfillment of conditions imposed by VUDA within 12 months. The petitioner association failed

to fulfill the conditions for release of final lay out within the prescribed time. The VUDA had issued show cause notice vide Rc.No.1229/91/G1 dated 24.1.1994 to the petitioner association informing that the petitioner association had not taken any action for development of the layout on ground as per layout conditions even after lapse of one year time and requested to provide infrastructural facilities within one month failing which the B.L.P released would stand cancelled. The petitioner association failed to fulfill the conditions for development of the layout within the prescribed time. The VUDA issued another notice in Rc.No.1229/90/G1 dated 15.7.1994 to complete the works within four months before 1.11.1994 as per the orders of this Court in W.P.M.P.No.14431 of 1994 filed by the petitioner Association.

26. It is further stated in the counter affidavit that the petitioner association again approached this Court in W.P.M.P.No.23667 of 1994 and obtained extension of time up to 28.2.1995 for development of the layout. The petitioner had failed to comply with the orders of this Court and again approached this Court and obtained extension of time up to 30.6.1995 in W.P.M.P.No.3768 of 1995 dated 7.4.1995 as a last opportunity for completion of formation of roads etc., and not to treat the

layout plan released as cancelled, but the petitioner this time also failed to complete the development works as specified and again approached this Court and obtained extension upto 20.7.1995 and the petitioner society failed to comply the conditions even after 20.7.1995 and again approached this Court in W.P.No.11872 of 1994 dated 25.7.1995 which was disposed of with a direction that the petitioner shall complete the layout development works before 31.12.1995 and also held that it is unnecessary to keep the writ petition pending alive and expressed no opinion on the issue raised and the writ petition was accordingly disposed of.

27. It is further stated in para-6 of the counter affidavit that the VUDA had given a show cause notice in Rc.No.1229/90-G1 dated 4.7.1997 to the petitioner association that the petitioner association had not developed the layout as per conditions, and that this Court granted extension of time on various occasions and that the petitioner not obeyed the orders of this Court and failed to complete the infrastructural facilities as per specifications and informed to fulfill conditions within 15 days failing which necessary action would be taken under Section 32(2) of the Urban Areas Development Act 1979. The petitioner association disobeyed the orders of this Court on

number of occasions and not completed the developments and specifications in the layout inspite of extension of time limits given from time to time. The respondent corporation had not delayed the matter intentionally at any point of time in releasing the layout plan and that the petitioner association did not come forward to fulfill the conditions in the layout to the B.L.P. released during 1993 and to complete the developments in layout till 2004 on one pretext or the other by filing various writ petitions before this Court and the petitioner association itself delayed the development of layout as per conditions for about 11 years after the release of B.L.P. during 1993.

28. Further it was stated in para-7 of the counter affidavit that the Hon'ble High Court in W.P.No.29309 of 1995 filed by the petitioner association directed the VUDA to send a team of engineers on 31.1.2004 to the petitioner society to inspect as to the compliance of objections raised by VUDA and after inspection, the report be placed before this court for further orders in the matter and VUDA was also directed to indicate about the implementation of conditions imposed in B.L.P. No.1/93 dated 5.1.1993 in its report. As per the directions of this Court, the VUDA constituted a team of engineers headed by the then Gajuwaka Municipality to inspect the layout on 31.1.2004 to submit

report to the Hon'ble High Court. The committee constituted had inspected the site on 31.1.2004 and submitted its inspection report that only 65% of infrastructure work was completed by the petitioner association.

29. Further it was stated in para-8 of the counter affidavit that in pursuance of the orders of this Court in W.P.No.29309 of 1995 dated 5.8.2004 and as per the orders of the VUDA in letter Rc.No.wP.No.29309/95-1Plg., dated 21.8.2004, the same committee inspected the layout site in the presence of petitioner society on 25.8.2004 and submitted report to VUDA on 1.9.2004 and the committee reported that the society may be directed to comply with the following conditions in respect of formation of roads, drains, electricity and handing over of 10% open space to the municipality before release of final layout.

1. Formation of balance roads and drains as shown in plan in 2 pockets area Acs.2.05 cts within a stipulated period or the 2 pockets may be ordered to be deleted from the L.P.boundary for present.
2. Electrification to be done for all roads and conductors to be drawn for all roads and another three transformers to be provided and an undertaking to this effect to be furnished obtaining from the APTRANSCO regarding completion report of the electrical works.
3. two bore wells to be provided in open space for water supply.
4. the alternative open space area Ac.1.27 cts now

proposed by the society may be agreed which should be handedover to the then Commissioner, gajuwaka Municipality and for blance area of Acs.2.69 cts., of 10% open space, cost should be paid to the then Commissioner, Gajuwaka Municipality as proposed by the Mathrusri Co.op Housing Board Society since the open space marked in B.L.P.1/93 were divided into plots and sold long back in the year 1982 by the Mathrusri Co.op Society and the plot holders are also representing to VUDA. The VUDA may please be considered to release this old lay out subject to fulfillment of the above works and a compliance report may be submitted to the Hon'ble A.P.High Court.

30. It is further stated in para-9 of the counter affidavit that basing on the report of the committee in which the then Commissioner, Gajuwaka is a first member, the VUDA in Proc.No.1229/90/G1/W.P.No.29309/95, dated 22-09-2004, released the final lay out of the petitioner society to the then Gajuwaka Municipality subject to fulfillment of following conditions within a period of thirty days by the petitioner society:

"1) The society should form the balance roads and drains as shown in the plan in 2 pockets area Acs.2.05 cts. Within stipulated period and if it cannot be done, the 2 pockets may be withheld from the lay out boundary.

2) To furnish a certificate from A.P.TRANSCO of having completed the street electrification works together with provision of 3 transformers to the then Commissioner, Gajuwaka Municipality.

3) Two bore wells to be provided in the open space.

4) Should handover Acs.1.27 cts. Open space duly fencing it over a 2' basement wall through a registered gift deed to the then Commissioner, Gajuwaka Municipality and society

should pay value to the then Commissioner, Gajuwaka Municipality for the balance area of Acs.2.69 cts. Towards 10% open space to fulfill the 10% open space norms as per the undertaking given by the petitioner society before VUDA.

5) The society shall ensure withdrawal of all court cases filed by the affected allottees in the open space areas of B.L.P.1/93 as their grievance have been resolved.

6) The society shall comply with all the conditions and submit a compliance report to the then Commissioner, Gajuwaka Municipality and VUDA along with the lay out plan to issue L.P.No.by VUDA within a period of 30 days failing which the final lay out plan now released shall stands cancelled without any further notice."

31. It is further stated in para 10 of the counter affidavit that the then Gajuwaka Municipality immediately after release of final lay out by VUDA with the above conditions, issued an endorsement, dated 28-09-2004 to the petitioner society to fulfill and implement the layout conditions within a stipulated period of 30 days and to submit a report for onward submission to the VUDA for necessary action in the matter. The petitioner society had not fulfilled the conditions imposed by VUDA within 30 days and not submitted any compliance report in this regard. The then Gajuwaka Municipality issued another endorsement dated 27-11-2004 to the petitioner society requesting to take immediate action for fulfillment of layout conditions within 7 days, by registered post on 13-12-2004. It is further stated that the petitioner society had not fulfilled the above conditions except condition No.3,

providing of bore wells. The petitioner had not fulfilled the remaining conditions i.e., 1,2,4,5 and 6, which are imposed by the competent authority VUDA as per the inspection report of the committee appointed by the orders of Hon'ble High Court in W.P. No.29309 of 1995, dated 05-08-2004.

32. It is denied in para-11 of the counter affidavit that the land of Acs.2.05 in 2 pockets had been encroached upon illegally by certain landless persons and suitable civil action was initiated against them and an amount of Rs.13,04,000/- paid to APSEB towards estimated cost for providing electrification and 3 of the 4 electric transformers installed by the Electricity Board had suffered pilferage, similarly transmission lines which had been laid in the layout had been cut and stolen away taking advantage of the darkness of the layout and upon a complaint lodged with the local police station, crime had been investigated and 5 out of 6 persons responsible for the pilferages had been arrested and some of the stolen property had been retrieved etc., are all false and invented for the purpose of the writ petition. In fact, the petitioner society with willful intention to evade the condition No.2, obtained the certificate from A.P. TRANSCO. The petitioner society had produced a letter of Divisional Electrical Engineer, Operation

Division/Zone II, Visakhapatnam addressed to the petitioner society informing that the theft case is under the investigation of police and soon on receipt of police enquiry report, action will be taken for providing new wires. The letter of A.P. TRANSCO given to the petitioner society did not contain sufficient material to prove that the petitioner society fulfilled condition No.2. Further, the petitioner society had not produced any material evidence including FIR in support of the contention regarding pilferages of transformers, electrical wires etc. It is also denied by them that all the roads had been once again re-laid, the masonry drainage had been accomplished and tree plantation work had also been provided and during the course of inspection by team of VUDA officials in which the engineering staff of the then Gajuwaka Municipality had also participated, the green belt and open spaces provided in the layout had been measured and recorded as Acs.1.27 etc., and accordingly 2 open spaces had been completely surrounded by a 2' compound wall and mesh installed thereon are all false and invented for purpose of the writ petition.

33. It is further stated in para-12 that in fact the condition No.1 is not fulfilled by the petitioner society as the drains in road No.27 and 28 are to be completed. The petitioner wrongly stated all the roads are re-

laid, the masonry drainage accomplished and open space of Acs.1.27 cts., is measured. In fact, the open space of Acs.1.27 cts. as proposed by the petitioner association is only 54 cents, but not provided Acs.1.27 cts. The petitioner had to handover Acs.39.61 cts., equivalent to 10% of total layout area of Acs.39.61 cts., by way of gift to the then Gajuwaka Municipality. The petitioner society had given representation to the committee and VUDA expressing their inability to handover 10% open space of total layout area of Acs.39.61 since they sold all plots to different allottees as early as in 1982 and that society had given Acs.1.25 of land free of cost for formation of 100' and 60' roads and in alternative the society proposed to provide Acs.1.27 of land available with them as open space and also proposed to pay necessary value of balance open space of Acs.2.69 to fulfil 10% open space to the then Gajuwaka Municipality. The committee as well as VUDA had examined the proposal of the society and agreed for that and imposed a condition No.4 accordingly during the release of final layout.

34. It is further stated that the petitioner society had not earmarked open space on the ground measuring of Acs.1.27 but the open space measured is only 54 cents. Further, the petitioner association had

remitted an amount of Rs.1,70,400/- in the form of cheques towards the cost of balance open space for Acs.2.69 at the market values prevailing in 1982 for some survey Numbers and in 1993 for some other survey numbers and enclosed the market value certificates for 1982 and 1993 issued by Sub-Registrar, Gajuwaka. The then Gajuwaka municipality in letter dated 28-12-2004 sought a clarification from VUDA authorities, which is a competent authority to release L.P. number for final layout of petitioner society regarding payment of open space cost to the then municipality as per market value prevailed as on 1982 and 1993. The VUDA authorities had clarified that regarding extension of time if the applicant makes any representation for extension of time, the same will be considered on merits and regarding open space charges, the same need to be paid as per the registration value prevailing as on the date of payment. And as per Government orders issued In G.O.Ms.No.37 MA & UD (M1) Department dated 30-01-1996 the open space cost has to be collected as per the present registration value fixed by the concerned registration department at the time of payment. The petitioner society had sent cheques for the open space cost as per market value prevailing in 1982 and 1993 only. The petitioner society given an undertaking to pay open space cost for

balance 10 open space and basing on the undertaking and inspection report of the committee, the final layout was released by VUDA during September 2004 with the conditions. The petitioner society was bound to pay open space cost for Acs.2.69 as per the market value prevailing during September/October 2004 as given by the registration Department. The petitioner society had failed to fulfil the condition No.4 for payment of open space cost as per the market value.

35. It was further stated in para-15 of the counter affidavit that as per the condition No.7 imposed by VUDA in B.L.P.1/93 issued in Proc.Plg.Rc.No.1229/91-G1 dated 08-01-1993, the society had to deposit title deeds of 50% of the plotted area with VUDA duly executing an equitable mortgage deed as security deposit for the development of infrastructure to proper standards is specified and to the satisfaction of VUDA. Condition NO.8 of the said B.L.P. clearly says that 10% of the total layout area which is marked as public open space in the layout plan shall have to be handed over to the local authority/VUDA by way of execution of gift deed along with the development deeds. After receipt of said B.L.P.No.1/93, the petitioner society had not put up any representation that all plots are sold as long as in 1982. This issue was raised only when the VUDA insisted once

again to gift 10% of the open space or pay 10% of total land value in lieu of open space. He denied the false allegations that he is habituated to receive illegal gratifications for performing his official functions and not put up any proposals to pass a resolution to accept the gift of open spaces and receive the value of balance open spaces etc. It also denied that the then Gajuwaka Municipality had not taken any steps for passing a resolution for vesting of the roads and bore wells dug up in the layout for providing drinking water and to take over the maintenance of the masonry drains etc., and sitting tight on the matter and not passed orders and tried to create false record etc. It is stated that the petitioner with a *mala fide* intention and to draw the attention of Hon'ble Court created fabricated allegations against him for obtaining the favourable orders from the Hon'ble High Court.

36. It is further stated that it is true that petitioner filed contempt case in C.C.No.240 of 2005 for violating the orders passed by the Hon'ble Court in W.P. No.29309 of 1995 dated 30-09-2004 read with the orders passed on 18-01-2005 in W.P.M.P.No.32183 of 2004. The said contempt case is still pending before the Hon'ble High Court. The petitioner society had not complied with all the conditions imposed by VUDA in letter Rc.No.1229/90/G1/ dated 22-09-2004 even after a

lapse of stipulated time of 30 days. As such the then Gajuwaka Municipality had not taken any action for requesting the VUDA to release the L.P. number. If the petitioner society complies all the conditions imposed by VUDA and submits compliance report, the then Gajuwaka Municipality may recommend to VUDA to issue L.P. number to final layout of petitioner society. The competent authority VUDA had released final layout of the petitioner society to the then Gajuwaka municipality subject to fulfillment of the six conditions within 30 days, failing which the layout released stands cancelled without any further notice. The petitioner society had not fulfilled conditions 1, 2, 4, 5 and 6 and not requested for grant of extension of time. The time limit prescribed by VUDA is expired and the proceedings dated 22-09-2004 is stand cancelled. The petitioner society had not fulfilled the above conditions even after lapse of more than ten months so as to send a report to the VUDA for release of L.P. number and to release the final layout. It is true that the then Gajuwaka Municipality is bound to carry out in all respects the directions issued by VUDA which is a statutory corporation and not vested with any further discretion in the matter. In fact, the VUDA had released final layout plan subject to fulfillment of six conditions within a stipulated time of thirty days. It is further stated

that as the petitioner society had not fulfilled the conditions the then Gajuwaka Municipality had not reported to the VUDA for release of layout plan.

37. It is further stated in para-18 of the counter affidavit that it is not true to say that the then Gajuwaka municipality created record etc., as long back as on 24-04-1995, and the second respondent, who was also functioning as the then Municipal Commissioner, suggested to the VUDA that the layout be released in faovur of the society and that the second respondent was acting for extraneous reasons and consideration by deliberately withholding the release of the layout plan etc. The second respondent was bound to act as per the provisions of the Act and directions of higher authorities i.e., VUDA. In fact, he also worked during the period of August, 1994 to November, 1996 and again posted on promotion during November, 2003. During the gap period four Commissioners were worked in the then municipality. IN fact, the B.L.P. No.1/93 was released during the year 1993 subject to fulfillment of conditions. The petitioner had not fulfilled the conditions since 11 years on one reason or other and the respondent never suggested to the VUDA to release the layout in favour of the society. In fact, during second posting in the municipality, the then

Commissioner, Gajuwaka Municipality submitted inspection report to the VUDA to release final layout with conditions as per the directions of Hon'ble Court in W.P. No.29309 of 1995. He had no extraneous reasons to withhold the release of layout plan, as the VUDA is the competent authority to release L.P.Number to the final layout plan. In fact, the then Gajuwaka Municipality is a forwarding authority to the VUDA in respect of layouts approval in its limits.

38. It is further stated that as the petitioner society had not fulfilled the conditions stipulated by VUDA within stipulated time and as no open space lands as required under the conditions are handed over and cost of the open space land as per the present market value not paid at any point of time, the then Gajuwaka Municipality not put such proposal before the council for passing of resolutions. It is not true that the second respondent actuated by extraneous considerations and deliberately withholding the release of lay out. The petitioner society had to pay open space cost for the 10% open space of Acs.2.69 cts. as per the present market value. The payment of open space cost is one of the pre-requisite conditions before releasing of L.P. number for final layout to petitioner society. The balance cost of open space cannot be collected as arrears of land revenue after the release of final layout. It

was further stated that the petitioner society had filed as many as 11 writ petitions and W.P.M.Ps. excluding the present writ petition seeking directions and the present contempt case in C.C.No.240 of 2005 is also pending before the Hon'ble High Court. It is stated that the respondent is ready to release final layout provided the petitioner society fulfills the conditions stipulated by VUDA.

39. It is further stated in para-21 of the counter affidavit that in orders Rc.No.1229/90/G1/W.P.No.29309 of 1995 dated 22-09-2004 of Visakhapatnam Urban Development Authority, the final layout released subject to fulfillment of six conditions within 30 days by petitioner society and as the petitioner had not fulfilled six conditions within the stipulated time the said orders cancelled as per the proceedings of the Visakhapatnam Urban Development Authority. It was also stated that the petitioner society had to fulfil the conditions to revalidate the orders Rc.No.1229/90/G1/W.P.No.29309 of 1995, dated 22-09-2004, of Visakhapatnam Urban Development authority and to release the L.P. number for the final layout of the petitioner society.

40. In the lengthy counter filed by the Commissioner of the first respondent Corporation this is the stand which had been taken.

41. In the counter affidavit filed by the second respondent, Sri

G.S.N.Murthy all the allegations made as against him were specifically denied. This respondent while specifically denying the allegations had stated that it is not true to suggest that he had not initiated any steps to release the final layout plan in favour of the petitioner society. It is false and unfair on the part of the petitioner society to allege that it is openly touted in Gajuwaka that this respondent was habituated to receive illegal gratifications for performing his official functions and it is also not true to state that this respondent had not put any proposal before the municipality to enable it to pass a resolution to accept the gift of open spaces and green belt area of an extent of acres 1.27 and to receive the value of the balance open spaces. It is also not true to suggest that he had not taken any steps for passing a resolution for vesting the roads and the two bore wells dug up in the lay out for providing the drinking water in the layout and the take over of the maintenance of the masonry drains and 54 culverts constructed in the layout. It is false to allege that this respondent had not passed the said orders and created false records and that this respondent had been attending the relevant work. It was also stated that this respondent did not make any illegal demand to the petitioner society and therefore, the question of the petitioner not succumbing to the illegal demand does

not arise and it is also unfair and indecent on the part of the petitioner to allege that there was rumor that this respondent had received illegal gratification through his wife from the petitioner society. It is stated that the petitioner is making baseless allegations for the first time in the affidavit filed in support of the writ petition and the petitioner is liable for appropriate action for his admission and therefore, it is not true to state that this respondent deliberately and purposefully avoiding his legal obligation by not releasing the layout.

42. It is also further stated in para-5 of the counter affidavit that there is no truth whatsoever that this respondent proclaiming openly that this Court is not going to punish him at all and that the said allegations were made though not relevant for the purpose of the present writ petition with a view to gain sympathy of this court. It is also stated that this respondent had utmost faith, due regard and respect to this Court and he had never made any attempt to violate or flout the orders of this court willfully or intentionally. It is stated that whatever actions this respondent had done or is doing are in the interest of the public as well as to safeguard the interest of the first respondent municipality and therefore, he had no personal ill motive either against the petitioner society or anybody.

43. This respondent also further stated in para-6 of the counter affidavit that it is true to state that he had suggested to the VUDA that the layout may be released in favour of the petitioner society as long back as on 24.4.1995 in the capacity of Municipal Commissioner during his past tenure, provided petitioner society fulfills al the conditions imposed by VUIDA and it is false to state that this respondent is acting for extraneous reasons and consideration by deliberately with holding the layout. As Commissioner, he always protected the interest of the State and its people. Ultimately this respondent had taken a stand that what all he had done was in discharge of his public office and public duties without any fear of favour and false and baseless allegations are being made against him.

44. Third respondent filed counter affidavit and the same was sworn to by the Chief Urban Planner, Vishakapatnam Urban Development Authority. Though the counter is short in substance the stand taken by the first respondent appears to have been reiterated even by the third respondent. It is stated that as regards payment of open space cost the Society shall pay as per the prevailing registration value at the time of payment of the amount. It was also stated that regarding other aspects, which are raised in para-3 of the affidavit filed

in support of the writ petition, the second respondent is the appropriate authority to furnish remarks. It was also stated that it is a fact that the State Government constituted Greater Vishakapatnam Municipal Corporation by merging erstwhile Gajuwaka Municipality had become defunct and stood amalgamated in Greater Visakha Municipal Corporation and consequently the entire matter had now got to be dealt by the Greater Visakhapantma Municipal Corporation and the petitioners can be allowed to substitute Greater Vishakapatnam Municipal Corporation represented by its Commissioner in the place of Gajuwaka Municipality.

45. It was further pleaded that regarding the contention that VUDA need to be impleaded in the writ petition it is to submit that the VUDA had accorded approval to the layout subject to fulfillment of certain conditions. As regards open space charges the rule position is that the open space charges need to be paid as per the prevailing registration value. This fact had already been made clear to the Gajuwaka Municipality earlier. Now, that the issue devolved on Greater Visakhapatnam Municipal Corporation and as the Greater Vishakapatnam Municipal Corporation collects open space charge as per rules there may be no need to implead VUDA in the writ petition.

46. It was also stated that it is a fact that the VUDA approved the layout subject to fulfillment of certain conditions and communicated copy of layout to Gajuwaka municipality. Regarding compliance to the layout conditions, the Greater Visakhapantma Municipal Corporation is expected to inform the VUDA on compliance of the conditions so as to enable the VUDA to assign L.P.number and to release the same to the Society. It is also stated that there is nothing which prevent the petitioner association to approach the Commissioner, Greater Vishakapatnam Municipal Corporation and to submit compliance of the conditions insisted at the time of approval of the layout by the VUDA and to request for a report to the VUDA on compliance of conditions so as to enable the VUDA to assign L.P. number and to release the same to the Greater Visakhapatnam Municipal Corporation and to the Society. The petitioner society instead of approaching the Commissioner, Greater Vishakapatnam Municipal Corporation and apprising all relevant aspects related to the layout, rushed to the Court for finding a solution to the problem. It is also stated that relating to the contention that the land value had been paid after ascertaining the land value from the local Mandal Revenue Officer, it is stated that if the value is paid as per the prevailing registration value at the time of

payment, there should not be any problem to the Greater Vishakapatnam Municipal Corporation or VUDA to take necessary action for release of the L.P. Regarding the contention of the Society that an extent of Ac.1.10 cents had been transferred by the Society in favour of VUDA free of cost for the purpose of laying of 100' road by V.E.P.Z., it is stated that all the developments within the Vishakapatnam Metropolitan Region shall be strictly in accordance with the sanctioned master plan and accordingly the Society might have made available the land for formation of 100' road. That cannot be quoted as reason for paying less amount towards open space cost by the society. It is also stated that the petitioner had all along been contending that the then Gajuwaka Municipal Commissioner was the main person who delayed the matter and responsible for not releasing the layout. Now that, since the issue lies with the Commissioner, greater Visakhapatnam Municipal Corporation the petitioner Association and the Society represented by its President can as well approach the Commissioner, Greater Vishakapatnam Municipal Corporation and put forth their contention and request for necessary action, which pave way for release of the layout. In this regard it is not out of place to mention that some of the plot owners to whom plots had

been registered by the Society formed into an association in the name of Mathrusree Nagar Housing Society Plot Owners Welfare Association altogether 92 members of the above association submitted a representation to the VUDA stating that the Society had been creating several hurdles and also requested for regularization of the layout. It is also stated that regarding the contention that open space cost can be arrived relying on several factors it is stated that the prevailing practice is to collect 10% open space charge as per the prevailing registration value at the time of payment of the amount. It was also further pleaded that the issue involved is very simple which can be sorted out at the level of the Commissioner, Greater Vishakapatnam Municipal Corporation and Vice Chairman of VUDA. The petitioner association and the Society had been contending that they complied with all the conditions except the issue related to payment of open space cost and regarding payment of open space cost, the Commissioner of Greater Vishakapatnam Municipal Corporation takes a decision to collect it as per the rules and that therefore, there should not be any problem for payment by the Society. In the light of the same dismissal of the writ petition was prayed for. In substance, these are the respective stands taken by the parties.

47. At the outset it may be stated that the specific allegations made as against R-2, impleaded as a party and the denial of those allegations in the counter affidavit filed by the said party need not be seriously adverted to. These allegations were made most probably to substantiate the stand by the writ petitioners that there was total inaction on the part of the then Commissioner, or there was dereliction of the discharge of duties. Be that as it may, in the light of the specific allegations made in the affidavit filed in support of the writ petition and the stand taken in the counter affidavits, these allegations being oath against oath, in the absence of any other acceptable material to substantiate these allegations, this Court cannot record any positive findings relating to the same. Even otherwise, these aspects may not tilt the balance in any way in favour of either of the parties as can be seen from the respective pleadings of the parties.

48. It is stated by the learned counsel representing the petitioners that as far as the condition relating to the giving of gift or existence of gift is concerned the petitioners are prepared to comply with the said condition and the third respondent to positively consider the same. In the light of the offer which is being made by the writ petitioners, as far as the land value determination and the balance value to be paid and

the other minor aspects, which are being raised, these aspects also may be favourably considered in the light of the respective stands taken by the parties referred to supra by the third respondent. In relation to formation of roads and drains, it is stated that some litigation is said to be pending and there is no possibility of totally complying with the said condition. Whether in the facts and circumstances which would be explained, the third respondent to favourably consider relating to relaxation of these conditions and after considering all the facts and circumstances, the third respondent to pass appropriate orders in relation to the request which is being made by the writ petitioners in relation to the lay out in question, at the earliest point of time, since the matter is pending for sufficiently a long time. This Court does hope that in view of the fact that this being a long drawn litigation, the third respondent would favourably consider the request of the petitioner in the light of the factual background referred to supra, at the earliest point of time, preferably within two months from the date of receipt of this order. It is needles to say that the further steps in relation thereto and the communication to the first respondent and the other steps also to be considered at the earliest point of time.

49. With the above directions, the writ petition is disposed of. No

order as to costs.

10.8.2006.

mdaa